IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01/10/2004

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THE HONOURABLE MR.JUSTICE V.KANAGARAJ

WRIT PETITIONS No.126 OF 2004
ANDWRIT PETITION NO. 9818 OF 2004
AND W.P.M.P.Nos.736 AND 11477 OF 2004.

W.P.No.126/2004

A.Shanthi ... Petitioner

-Vs-

1.The General Manager,
Tamil Nadu State Office,
Indian Oil Corporation Ltd.
(Marketing Division),
139, Nungambakkam High Road,
Chennai-600 034.

2.The Dealer Selection Committee,
Indian Oil Corporation Limited
(Marketing Division),
No.8/1079, Avinashi Road,
Coimbatore-641 018.

3.The Senior Area Manager,
Indian Oil Corporation,
No.8/1079, Avinashi Road,
Coimbatore-18.

4.G.Nallammal ... Respondents

W.P.No.9818 OF 2004:

M.Vijaya ... Petitioner

Vs.

1.Indian Oil Corporation Limited,
rep.by its General Manager,
T.N.S.O. Marketing Division,
139,Nungambakkam High Road,
Indian Oil Bhavan,
Chennai-600 034.

2.The Area Manager,
Indane Area Office,
Indian Oil Corporation Limited,
8/1079, Avinashi Road,
Coimbatore-641 018.

3.The Dealer Selection Committee,
C/o.Indane Area Office,
I.O.C.Ltd.,
8/1079, Avinashi Road,
Coimbatore-641 018.

4.Mrs.G.Nallammal
5.A.Shanthi ... Respondents

Writ Petitions filed under Article 226 of the Constitution of India praying for the reliefs as stated therein.

!For petitioner in
W.P.No.126/2003 : Mr.S.Silambanan

For petitioner in
W.P.No.9818/2004 &
R.5 in W.P.No.126/2003 : Mr.R.Gandhi, S.C.
for Mr.V.P.Sengottuvel
^For R.1 to R.3 in
both the W.Ps. : M/s.Poornima Viswanathan

For R.4 in
both the W.Ps. : Mr.K.M.Vijayan, S.C.
for Mr.B.Saravanan
:COMMON ORDER

Both the Writ Petitions have been filed under Article 226 of the Constitution of India, the first one in W.P.Nos.126 of 2003 praying to issue a Writ of Declaration declaring the selection made by the respondents 1 and 2 as displayed on the notice board of the office of the third respondent for selection of LPG Distributorship for Velur, Namakkal District pursuant to the interview held on 29.10.2003 as null and void being against the guidelines issued by the Ministry of Petroleum and Natural Gas, Government of India in No.P-39012/1/1999-IOC dated 9.10.2000 and consequently direct the respondents 1 to 3 to consider the selection of the petitioner for LPG Distributorship at Velur (Namakkal District) under PH-W category.

2. W.P.No.9818 of 2004 has been filed praying to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned proceedings vide Notice Board of the third respondent in the Ref.No.NIL dated 29.10.2003 and quash the same insofar as placing the 4th and 5th respondents in Serial Nos.1 and 2 respectively in the merit list and consequently direct the respondents 1 to 3 herein to appoint the petitioner placed in Serial No.3

in the list as Distributor for Indane Gas under Physically Handicapped Category at Velur, Namakkal District.

3. On a perusal of the materials placed on record and upon hearing the learned counsel for all the parties, it comes to be known that the respondents 1 to 3/Indian Oil Corporation has issued an advertisement calling for applications for appointment of L.P.Gas (Indane) Distributors to various locations including one of Serial No.25, Velur, Namakkal District under Physically Handicapped category (reserved for women) and both the petitioners and the fourth respondent in the above writ petitions have applied for the same and they all have appeared before the third respondent for an interview on 29.10.2003 and after interview, the third respondent has short listed the candidates for Velur LPG Distributorship by empanelling the three candidates in the order of merit as follows:
1.G.Nallammal (the fourth respondent in both the W.Ps.)
2.A.Shanthi (Petitioner in W.P.No.126/2003 and R.5 in W.P.No.9818/2004)
3.Vijaya (Petitioner in W.P.No.9818/2004)

4. Accordingly, the fourth respondent was awarded the L.P.G. Distributorship. Aggrieved by the selection of the fourth respondent as the LPG Distributor, the rest of the two unsuccessful candidates have come forward to file the above writ petitions on ground that the 4th respondent G.Nallammal does not possess the minimum educational qualification of SSLC/Matriculation (pass) whereas they are more qualified in all respects against any of the other two candidates appeared for the interview and that the selection of 4th respondent as the Dealer by respondents 1 to 3 is arbitrary and without any qualification/ eligibility and is against the Evaluation of Guidelines of Dealer Selection Board issued by the Ministry of Petroleum and Natural Gas, New Delhi.

5. During arguments, Mr.R.Gandhi, learned senior counsel appearing for the petitioner in W.P.No.9818/2004 and the fifth respondent in W.P.No.126/2003 would submit that the entire selection was on total non-application of mind by the respondents 1 to 3; that the petitioner in W.P.No.9818 of 2004 has produced the nativity certificate and has also produced the details regarding the showroom building premises and two vacant sites for the construction of Indane cylinder storage godown by way of producing a topo-map of Velur Urban & Rural area and also produced the lease deeds for showroom as well as godown site situated at NH7 (across Velur town) in front of one godown site; that the I.O.C. without considering any of the materials placed by this petitioner, has awarded more marks for the fourth respondent and that in any way, assessing from any angle, this petitioner is more qualified than the other two candidates appeared for the interview; that she has completed her Higher Secondary Course (+2 Level) during 1990 at Thottiam, Trichy District and certificate course in Library and Information Science at Annamalai University and she is now working in M/s.K. P.K. Gas Service Point, H.P. Gas Distributor, Trichengode from 1.6.200 1 and thus having experience in the field of gas distribution and hence she should have been given preference. The learned senior counsel would also submit that even in calculating the marks awarded to the candidates, there is a mistake, which

would also prove the nonapplication of mind of the authorities of respondents 1 to 3.

6. The learned senior counsel would refer to the addendum published by the respondents 1 to 3 in 'The Hindu' dated 24.7.2000 to the earlier notices dated 24.6.2000 and 16.7.2000 wherein it has been mentioned as follows:

".... Important Note 1: The candidate should furnish, along with the application, details of land, which he/she may make available for the LPG Distributorship.
2. Considering the location of the land from the point of view of commercial angle, applicants willing to transfer the land on ownership/ long lease to IOC would be given preference.
3. If an applicant, after selection, is unable to provide the land indicated by him earlier within a period of two months, the allotment of the distributorship made to him will be cancelled."

7. Laying emphasis on Note (2) above and producing the map showing the showroom and site of the petitioner, the learned senior counsel for the petitioner would submit that while giving particulars as required in the application form, the petitioner had given particulars and documentary proof regarding two sites for godown purpose and one showroom area in the main town of Velur, to locate showroom and godown and in fact, out of the two sites mentioned for godown purpose, one site is in the same area where the showroom has been shown and another vacant site for godown shown by the petitioner is also closer to showroom i.e. on the same National Highway with a short distance of 0.7 k.m. and therefore the godown and site mentioned by the petitioner is located in a good place from the point of view of commercial angle as required by the respondents and since the petitioner has fully satisfied the said condition, she should have been given preference. At this juncture, the learned senior counsel would cite a judgment of this Court delivered in M.N.ABDUL RAHIM vs. THE DIVISIONAL MANAGER, IOC, MAWRKETING DIVISION, MADURAI AND THREE OTHERS reported in 1984 Writ L.R. 481 wherein a learned single Judge of this Court having found that the 'consideration of facts by the I.O.C. authorities on the mistaken assumption with regard to the residence and address of the person selected' has quashed the selection of dealership.

8. The learned senior counsel would also cite yet another judgment of this Court delivered in V.CHANDRAN vs. OIL SELECTION BOARD, TAMIL NADU, PONDICHERRY AND ANDAMAN, NICOBAR ISLANDS AND OTHERS reported in (1995) II M.L.J. 458 wherein a Division Bench of this Court has held:

"The 1st respondent and other such Boards constituted for other areas will be dealing with appointment of Indane Distributorship, allotment of Petrol Bunks and other matters connected with sale and distribution of the products of the Oil and Natural Gas Commission of the Union of India. Therefore, it should not result in distribution of larget of the State. The functioning, proceeding and decision of the 1st respondent should be transparent so as to

be free from criticism and arbitrariness. The proceedings of the Board should speak for itself. There should be a regular proceeding dra wn up discussing the mortise of each candidate and the reasons for selecting the required number of applicants out of several applicants. AS the Board is headed by a retired Judge of the High Court, there should not be any difficulty in ensuring that the proceedings and the decision of the Board are free from arbitrariness and informed by reasons. In other words, the decisions of the Board must speak for itself to avoid arbitrariness and to ensure the propriety and regularity of the proceedings of the Board and the requirement of Art.14 of the Constitution. We accordingly issue the directions to respondents 1 to 3 in the aforesaid terms. We also direct the 3rd respondent to issue similar directions to all other Oil Selection Boards constituted for other areas."

9. The learned senior counsel for the petitioner would further submit that the Government of India, Ministry of Petroleum and Natural Gas in its Office Memorandum No.P-39012/1/99-IOC has issued guidelines for selection of retail outlet dealers/LPG Distributors on 9.10.2000 to achieve the object of providing transparent, uniform, fair and faster procedure for selection of suitable candidate as dealer/ distributor and as per clause 3.10 the norms for evaluating the candidates has been fixed as follows:

"The Dealer Selection Committee will judge the inter-se suitability of the candidates for all the categories, except Defence Personal as follows:
a) Personality, Business ability
and Salesmanship 20 Marks

b) Capability to arrange finances 15 Marks

c) Educational Qualification &
general level of intelligence 20 Marks

d) Capability to provide
infrastructure (land godown,
showroom etc.) and 35 Marks

e) General Assessment 10 Marks
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100 Marks
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10. The learned senior counsel for the petitioner would further submit that even the counter affidavit filed by the 4th respondent before this Court is silent about her eligibility criteria such as (1) Educational Qualification, (2) Experience in supervision of person and in business, (3) Infrastructure for Godown and showroom, (4) general assessment etc. to support her claim as a candidate place at Serial No.1 of the merit list.

11. The learned senior counsel for the petitioner would further submit that the third respondent ought to have seen that the petitioner is the only person who satisfied the preference clause given in the conditions in the advertisement of the Corporation dated 24.7.2000 and when such is the position, the respondents 1 to 3 have committed grave error in placing the

petitioner at the third position after respondents 4 and 5 and the selection of fourth respondent, who has failed in the SSLC examination in the year 1967 and not eligible for selection according to the Office Memorandum dated 9.10.2000 is arbitrary and illegal. On such grounds, the learned senior counsel would pray for the relief extracted supra.

12. On the other hand, the learned counsel appearing for the petitioner in W.P.No.126 of 2003, besides endorsing the arguments of the learned senior counsel for the petitioner in W.P.No.9818 of 2004 insofar as they are concerned with the fourth respondent and denying the same insofar as the allegations made against the petitioner in this writ petition and the 5th respondent in W.P.No.9818 of 2004, would submit that the petitioner is a Physically Handicapped Person possessing +2 (pass) educational qualification; that the fourth respondent is a failed candidate in the XI Class of SSLC Examination in the year 1967 and when once the educational qualification was not there, the respondents 1 to 3 ought to have rejected the application of the fourth respondent and the I.O.C. has not applied its mind and has selected the fourth respondent; that aggrieved, the petitioner has sent a representation dated 7.12.2003 to the respondents 1 and 3 thereby stating that the selection of 4th respondent is against the guidelines issued by the Ministry of Petroleum and Natural Gas, New Delhi and requested that she may be selected for the distributorship for which a vague reply was received from the 1st respondent dated 29.11.2003 stating that selection of candidates and merit panel for the subject distributorship has been made strictly as per the guidelines issued by the Ministry; that thereafter, the petitioner addressed a letter to the IOC Grievance Cell, Mumbai pointing out that selection for a candidate has been made, who does not meet the minimum educational qualification and requested intervention and on 28.12.2003, she also sent a letter to the first respondent thus extracting the relevant clauses of the dealer selection guidelines regarding educational qualification and disqualification but so far no reply has been received and hence the petitioner has come forward to file the above writ petition. The learned counsel would further submit that the selection procedure should have been transparent, in which event, the petitioner should have been selected for the dealership. On such grounds, the learned counsel for the petitioner would pray for the relief extracted supra.

13. In reply, besides filing a counter, the learned senior counsel appearing on behalf of the fourth respondent in both the above writ petitions would submit that this is not an issue which could be determined in a writ petition by this Court since disputed questions of facts are raised by the petitioners and if at all the petitioners are aggrieved of the non-selection, they ought to have preferred civil suits because the issue that has been raised relating to the location of sites for the purpose of constructions of cylinder storage godown and the store room, cannot be gone into by this Court under Article 226 of the Constitution.

14. The learned senior counsel for the fourth respondent would further submit that one of the unsuccessful candidates, by name P.Mekala filed a similar writ petition before this Court in W.P.No.34198 of 20 03 and this Court by order dated 11.2.2004 dismissed the same, after verifying the entire records connected to the subject and having found that the fourth respondent

herein is a meritorious candidate than the said P.Mekala and the said order of this Court would operate as resjudicata insofar as the petitioners herein are concerned.

15. The learned senior counsel would further submit that the selection list was published on 29.10.2003 by the third respondent and 818 of 2004 has been filed in moth of April, 2004 and that itself exhibits the malafide intention of the petitioners to prevent this respondent from starting the dealership at Vellore, Namakkal District and these writ petitions have been filed at the instance of some existing dealers of Oil companies in order to protect their personal interest and therefore the above writ petitions suffer from malafide intention, latches and amounts to abuse of process of Court and hence they are liable to be dismissed with exemplary costs; that this respondent has also obtained a letter of Intent from the I.O.C. officials and invested huge money.

16. The learned senior counsel would further submit that the mere statements of the petitioners on their own affidavits that they are only the better candidates against any other candidate does not hold water; that the judgments cited by the learned senior counsel for the petitioner in W.P.No.1918 of 2004 does not apply to the facts of the case in hand since the question of preference would not arise as this respondent hails from the same area.

17. The learned senior counsel would further submit that the selecting authority having verified all the credentials of the fourth respondent has awarded her the dealership and this Court cannot go into the question of fact, while sitting under Article 226 of the Constitution of India unless the decision of the selection authority shocks the conscious of the Court and here, not even a single averment was placed by the petitioners to shock the conscious of this Court.

18. The learned senior counsel would read out passages from the counter affidavit filed by the I.O.C. wherein it has been stated that ' the petitioners want this court to sit on appeal over the decisions of the third respondent, also evaluate facts, appoint each of the petitioners as the selected candidate which is legally impermissible .... the selection was fair and as per the established policy, the panel revealing the positions was released after the Selection Committee carefully evaluated all the candidates'. The learned senior counsel would further submit that the petitioner in W.P.No.9818 of 2004 has affirmed in her affidavit that she has produced all the required documents along with the application, but, the I.O.C. authorities, in their counter have categorically stated that she had not mentioned the details of the land in her application and therefore, the averments that she satisfied all the conditions are incorrect and blatantly false.

19. The learned senior counsel for the 4th respondent would further submit that a learned single Judge of this Court has already passed order regarding the very same impugned order and the only difference is that the existing dealers of oil companies have set up other persons to challenge the same impugned order; that no doubt, the petitioner in the said writ petition

was not short-listed and after the Court order in the said writ petition, the fourth respondent was issued with the Intent and has also acted upon but because of the vexatious litigation of the petitioners, the fourth respondent is not able to enjoy the fruits.
20. Insofar as the allegation of the petitioners regarding the educational qualification of the fourth respondent, the learned senior counsel would submit that now the X standard is SSLC and that the selecting authority has satisfied himself with the certificates produced by this respondent and this is not a trial Court to produce to prove their veracity and only to prevent this respondent from enjoying the fruits, the petitioners have filed these writ petitions and would pray to dismiss both the above writ petitions.

21. The learned counsel appearing for the respondents 1 to 3/I.O.C., besides filing a counter and producing the original application forms submitted by both the petitioners, he would submit that the petitioner in W.P.No.9818 of 2004 has submitted in her application that she does not have the lands either for the godown or for the showroom and that she would make arrangements for the same in time and therefore the averments of the petitioner regarding two sites being given by her are false and on this ground itself, the W.P.No.9818 of 2004 has to be dismissed; that the petitioner in W.P.No.9818 of 2004 also did not give any locational advantage of the alleged sites; that the petitioners want this Court to sit on appeal over the decisions of the third respondent and also evaluate facts which is legally impermissible; that as far as the educational qualification of the fourth respondent is concerned, as per the certificate issued bythe Headmaster, she has passed one particular examination in the year 1965-66which is now called as Matric; that all the points were carefully considered by the I.O.C. before appointing the fourth respondent and has awarded the marks. The learned counsel would also produce the original marks sheets awarded by the I.O.C. to all the three short-listed candidates. The learned counsel would refute the arguments of the learned senior counsel for the petitioner in W.P.No.9818 of 2004 that there are mistakes even in calculating the total marks and would submit that there seems to be one or two minor mistakes, but that would not constitute to hold guilty the selecting authority of non-application of mind and that the entire selection process was done in accordance with the provisions of law in a transparent manner and would call for no interference from this Court.

22. In reply, the learned senior counsel for the petitioner in W.P. No.9818 of 2004 would submit that even though the order of empanelment was pasted on the Notice Board of the Dealer Section Committee on 29 .10.2003, the Corporation has not taken any steps for issuing letter of Intent to any of the selected candidates in the merit list in view of the specific order of injunction granted by this Court in various writ petitions and only after disposal of the writ petition, again the Corporation started processing the merit list and the petitioner who is a physically handicapped woman, with great difficulties and with the help of others found out the eligibility or otherwise of the respondents 4 and 5 in the writ petition and filed the above writ petition immediately after getting all the particulars; that so far no distributor for LPG gas has been appointed at Velur, Namakkal District and

this is the first advertisement for selection of a LPG Distributor and hence there is no one to instigate this petitioner to file the above writ petition. Regarding the allegation that the petitioner has not mentioned the details of the land in her application, which made her disqualify, the learned senior counsel would read out clause (1) of Part II of 'the Eligibility Criteria for Award of Dealerships/ Distributorships under 'Physically Handicapped' Category/' wherein it has been mentioned:

"If any statement made in the application or in the documents enclosed therewith or subsequently submitted in pursuance of the application by the candidate at any stage is found to be incorrect or false, his/her application is liable to be rejected without assigning any reason ...."

23. Citing the same, the learned senior counsel would submit that the applicant can submit all the documents at any stage pursuant to the application and therefore it cannot be taken as a ground to nullify the merit of the petitioner. Repeating his arguments regarding the 'preference', the learned senior counsel would further submit that the argument put forth on the aprt of the fourth respondent that now, SSLC is equivalent to X standard, is false since now a days SSLC is equivalent only to +2 and hence, the fourth respondent is not at all a qualified person to apply for the dealership.

24. Regarding the maintainability of the writ petition, the learned senior counsel would submit that since the selection is arbitrary, the petitioner is at liberty to challenge the same under Article 226 of the Constitution of India and this Court also, in many cases, has quashed such illegal orders of allotment. So far as the Order passed by this Court W.P.No.34198 of 2003, the learned senior counsel would submit that the same would not bind the petitioner, as she is not a party to the same and that too the petitioner therein was not a short-listed candidate and the questions arose for consideration are different from that of the present one. On such arguments, the learned senior counsel would seek for the relief in W.P.No.9818 of 2004.

25. The learned counsel for the petitioner in W.P.No.126 of 2004 would submit that insofar as the question of latches raised on the part of the respondents, his case would not fall under the said category, since the writ petition has been filed even in January, 2004 and even an interim order has been obtained on 6.1.2004. The learned counsel would further reiterate that the fourth respondent has not qualified SSLC and would submit that when the eligibility criteria itself has not been fulfilled by the fourth respondent, the I.O.C. authorities have grossly erred in granting dealership in her favour.

26. In reply, the learned senior counsel for the fourth respondent would submit that there are many judgments of the Honourable Apex Court thereby holding that if a judgment or order has been passed, it is not a judgment in personam but a judgment in rem and hence since the very same impugned order has been upheld by this Court in the order dated 11.2.2003 made in W.P.No.34198 of 2003, it will definitely bind the petitioners also and on such arguments, would pray to dismiss both the above writ petitions.

27. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for all, what could be assessed by this Court is that these two petitioners in both the above writ petitions who were unsuccessful in the selection of LPG Distributorship for Vellore, Namakkal District pursuant to the interview held on 29.10.2003 wherein the 4th respondent has been selected in preference to these two petitioners and therefore in the first writ petition above, the petitioner therein would pray to declare the selection made by the respondents 1 and 2 as displayed on the notice board of the office of the third respondent for selection of LPG Distributorship for Velur, Namakkal District pursuant to the interview held on 29.10.2003 as null and void being against the guidelines issued by the Ministry of Petroleum and Natural Gas, Government of India in No.P-39012/1/1999-IOC dated 9.10.2000 and consequently direct the respondents 1 to 3 to consider the selection of the petitioner for LPG Distributorship at Velur (Namakkal District) under PH-W category.
28. Likewise, in the second writ petition in W.P.No.9818 of 2004 the petitioner therein would pray to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned proceedings vide Notice Board of the third respondent in the Ref.No.NIL dated 29.10 .2003 and quash the same insofar as placing the 4th and 5th respondents in Serial Nos.1 and 2 respectively in the merit list and consequently direct the respondents 1 to 3 herein to appoint the petitioner placed in Serial No.3 in the list as Distributor for Indane Gas under Physically Handicapped Category at Velur, Namakkal District.

29. Tracing the history of the whole affair in short, it is seen that respondents 1 to 3 have issued the advertisement calling for applications for the appointment of LPG Gas (Indane) Distributorship to various locations including one of Serial No.25, Velur, Namakkal District under Physically Handicapped category (reserved for women) and both the petitioners and the 4th respondent in the above writ petitions have applied for the same and appeared before the third respondent for the interview on 29.10.2003 and thereafter, the third respondent, shortlisting the candidates, has empanelled the petitioners and the 4 th respondent in the order of merit, placing the 4th respondent in the first place, the petitioner in W.P.No.126 of 2003 in the second place and the petitioner in W.P.No.9818 of 2004 in the third place and accordingly awarding the LPG Distributorship to the 4th respondent.

30. The main attack of the petitioners against the selection of the 4th respondent in both the writ petitions is that she does not possess the minimum educational qualification of SSLC/Matriculation pass whereas they are more qualified in all respects against any of the other two candidates appeared for the interview and that the selection of the 4th respondent as the dealer of the respondents 1 to 3 is arbitrary and without the qualification or eligibility and against the evaluation of the guidelines of the Dealer Selection Board issued by the Ministry of Petroleum and Gas.

31. The admitted case of the 4th respondent is that she passed 10th standard in the year 1965-66 as per the SSLC book and it is Matriculation. She would cause production of a certificate issued by the Headmaster of the concerned Government Higher Secondary School to the said effect. Since it is

vital to decide this basic necessity i.e. the educational qualification being a mandatory requirement for the selection as the LPG Distributor and the inevitability of this basic qualification which would solve many a complication and avert lengthy discussions to be held into less important issues, this mandatory requirement of the 4th respondent which is in high controversy needs to be probed into and settled prior to settling the other issues.

32. The case of the 4th respondent is that during the year 1965-66, she passed out X standard i.e. Matriculation is violently false and patently erroneous. She might have passed X standard during the said period with which this Court is not at all concerned. But, it is relevant to consider whether a pass in X standard in the year 1965-66 was either SSLC or could it be taken as equivalent to Matriculation?

33. During the relevant period, 1965-66, a pass in XI standard Public Examination conducted under the authority of the Directorate of Public Instructions in Tamil Nadu was only considered as SSLC and that was only equivalent to Matriculation. It is further relevant to reveal that the then X Standard which the 4th respondent is said to have passed was not at all a public examination held but it was only the examination conducted in the school itself and it could only be considered as a mere pass in the X standard school examination and the same not being S.S.L.C. Public Examination passing which alone the S.S.L.C. was issued to the then standards maintained, at no stretch of imagination, the same could be termed as SSLC which then was a pass in XI standard public examination and that was only equivalent to the Matriculation. Needless to mention that the 4th respondent does not possess the required basic educational qualification and this Court is unable to digest as to how the respondents 1 to 3 in W.P.No.126 of 2004 have, thoughtless of the fact or without verification of the basic requirement, have concluded that the 4th respondent was having the educational qualification required for the purpose of selection for the distributorship. The manner in which these respondents 1 to 3 have decided the matter could not also be brushed aside saying that it was by mistake or oversight they have decided to accept a pass in X standard in the year 1965-66 either as a pass in the S.S.L.C. Examination or treating the X standard pass during the said period on par with Matriculation. Therefore, it could only be concluded that knowingly and wilfully and for extraneous reasons the respondents 1 to 3 in W.P. No.126 of 2004 have decided that the 4th respondent was educationally qualified to be selected for the distributorship. It is still more surprising that a Headmaster of the Government School, Paramathi has issued a false certificate offering opinion to the effect that 'a X standard pass in the year 1965-66 is now Matriculation' as though the then X standard pass was a pass in public examination so as to be treated equivalent to Matriculation. Under what authority or proof, these respondents 1 and 2 and the Headmaster who issued the educational qualification certificate have arrived at such blunt conclusions is only for them to explain, which they have failed to do.

34. So far as the notification issued by the Indian Oil Corporation is concerned, clause 2(c) dealing with the 'educational qualification' requires 'minimum matriculate or recognised equivalent'. The respondents 1 to

3 in W.P.No.126 of 2004 who are responsible for going into this vital aspect have not at all assessed the truth underlying the same nor assigned reasons for taking a X standard pass during the year 1965-66 and treating the same either as S.S.L.C. or 'the minimum matriculate or recognised equivalent'. Therefore, the only conclusion that could be arrived at in the respondents 1 and 2 deciding the 4 th respondent as a minimum matriculate or a recognised equivalent is that they have uttered falsehood betraying the system, the selection process and the very rule of law governing the system for extraneous reasons, duping the high public office that they are in, which is nothing short of an act perpetrated on their part in the manner unbecoming to the positions held by them, even exposing themselves to danger.

35. It could be borne in mind at this juncture that even in the matters of exercising discretion, it could only be done in a judicial manner since it is only a 'judicial discretion' by any authority that is required to be exercised since he is a creature under law and while law is such that even regarding the exercise of the discretionary powers the authority has to find reasons, no mention need be made regarding the compulsion imposed by law in dealing with the mandatory requirements such as the educational qualifications as required under clause 2(c) of the notification issued by the Indian Oil Corporation pertaining to the selection of LPG distributors concerned with the above writ petitions. Therefore, the respondents 1 to 3 in deciding the 4 th respondent to have had the educational qualification required under clause 2(c) of the notification has committed grave error and instead it should have decided that the fourth respondent is far inferior to the standard required as a result of which they should have rejected the case of the fourth respondent. On the other hand, the selection of the 4th respondent made by the respondents 1 to 3 as LPG distributor for Velore, Namakkal District since being not in adherence to the requirements of the educational qualification, the same has to be declared erroneous and void and the same is decided accordingly.

36. While such being the fact situation, so far as the mandatory requirement of the educational qualification of candidates is concerned, it looks strange on the part of the learned senior counsel appearing on behalf of the 4th respondent advancing the arguments to the effect that this Court is bereft of the power to go into the factual position of the case as though the decision of the respondents 1 to 3 in declaring an educationally unqualified person as qualified one so as to wrongly allot the distributorship is not either arbitrary or highhanded or even unreasonable and as though such acts committed on the part of the respondents cannot be gone into and they become bluntly acceptable particularly since the said aspect connecting to the basic qualification of the candidates has to be mandatorily observed to the requirement of the notification.

37. Since the case of the 4th respondent's selection for the distributorship falls to the ground, thus the order of her selection becoming liable to be quashed, it is not necessary on the part of this Court to go into the other minor aspects argued on the part of the petitioners and therefore

this Court is of the view that conclusions could be arrived at based on the erroneous conclusion arrived at on the part of the respondent authorities No.1 to 3 pertaining to the mandatory requirement of the rules. Hence, it is enough to conclude the issue at this level itself.
38. Further since both the petitioners are seeking each of them to be selected for the distributorship, this Court sitting on the judicial review of the above writ petitions, need not have to go into such facts regarding the suitability of each of these petitioners sitting in the place of the respondents whose duty it is to decide in accordance with law and the governing rules, it is only desirable to refer the matter to the respondents 1 to 3 or such authorities concerned to pass such orders in full consideration of the merit of both the petitioners and hence it is only desirable to refer the matter to the respondent authorities concerned for the purpose of selecting the suitable one among these petitioners.

In result,
(i) both the above writ petitions are allowed in part to the extent indicated above.
(ii) The order of appointment of the 4th respondent G.Nallammal in both the W.Ps. above as the LPG Distributor for Velur, Namakkal District pursuant to the interview held on 29.10.2003 and published in the Notice Board of the third respondent is hereby quashed.
(iii) The respondents 1 to 3 in W.P.No.126 of 2004 or such authorities concerned are directed to assess the suitability and the merits and ability of both the petitioners in the above W.Ps. and to pass such orders in full consideration of their merit regarding selection of the dealer for the LPG at Velur, Namakkal District at the earliest.

(iii) The Chairman, Indian Oil Corporation or any authority, having the disciplinary control over the respondents 1 to 3 in W.P.No.126 of 2004, is directed to initiate disciplinary proceedings against them for having violated the mandatory provisions of the notification in accepting falsely the 4th respondent's educational qualification as the required qualification under the Notification in spite of the same being far inferior to the standards set by the Notification.

(iv) The Director of Higher Secondary Education, Chennai is directed to initiate disciplinary proceedings against the Headmaster, Government Higher Secondary School, Paramathi, for having issued the false certificate filed by the fourth respondent in these cases placing him under suspension immediately and conducting an enquiry in accordance with the Disciplinary Rules and Law.

Consequently, W.P.M.P.Nos.736 and 11477 of 2004 are closed.
However, in the circumstances of the cases, there shall be no order as to costs.

Index: Yes
Internet: Yes

Rao

To

1.The General Manager,
Tamil Nadu State Office,
Indian Oil Corporation Ltd.
(Marketing Division),
139, Nungambakkam High Road,
Chennai-600 034.

2.The Dealer Selection Committee,
Indian Oil Corporation Limited
(Marketing Division),
No.8/1079, Avinashi Road,
Coimbatore-641 018.

3.The Senior Area Manager,
Indian Oil Corporation,
No.8/1079, Avinashi Road,
Coimbatore-18.

4. The Area Manager,
Indane Area Office,
Indian Oil Corporation Limited,
8/1079, Avinashi Road,
Coimbatore-641 018.

5. The Director of Higher Secondary
Education,
Chennai.

6. The Headmaster,
Government Higher Secondary School,
Paramathi.

7. The Advocate General,
High Court,
Madras.